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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

| | |
|---|---|
| ERIN HILEY,<br><br>Plaintiff,<br><br>vs.<br><br>MOLINA HEALTHCARE, INC., a Delaware Corporation, and Does 1 through 50, Inclusive,<br><br>Defendant. | Case No. 2:17-cv-01465-VAP-PLA<br><br>**JOINT RULE 26(f) REPORT**<br><br>**Date:** **May 1, 2017**<br>**Time:** **1:30 p.m.**<br>**Courtroom:** **8A**<br>**Location:** **First Street Courthouse, 350 W 1st Street, Los Angeles, CA 90012**<br><br>**Complaint Filed: January 20, 2017** |

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Pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 26-1, and the Court's Order Setting Scheduling Conference, Plaintiff Erin Hiley ("Plaintiff") and Defendant Molina Healthcare, Inc. ("Defendant") (collectively, the "Parties") hereby submit their Joint Report.

## I. NATURE AND BASIS OF CLAIMS AND DEFENSES

### A. Plaintiff's Claims

Plaintiff was employed by Defendant Molina Health Care, Inc in the position of Vice President/Senior Assistant General Counsel. As a result of Defendant's wrongful conduct, Plaintiff is pursuing claims for Gender Discrimination in Violation of Cal. Gov't Code § 12940(a); Violation of California Equal Pay Act; Sexual Harassment/Hostile Work Environment in Violation of Cal. Gov't Code §§ 12940(a) & (j); Retaliation in Violation of Cal. Gov't Code § 12940(h); Failure to Prevent Discrimination, Retaliation and Harassment in Violation of Cal. Gov't Code § 12940(k); Violation of Cal. Labor Code§ 1102.5(b); Constructive Discharge in Violation of Public Policy; Violation of Cal. Labor Code §§ 226 et seq.; Violation of Cal. Labor Code § 1198.5; Gender Discrimination in Violation of 42 U.S.C §§ 2000e-2(a)(1), et seq.; Sexual Harassment/Hostile Work Environment in Violation of 42 U.S.C. §§ 2000e—2(a)(1), et seq.; Retaliation in Violation of 42 U.S.C. §§ 2000e-3(a); Failure to Prevent Harassment, Discrimination, and Retaliation in Violation of 42 U.S.C. §§ 2000e—2(a)(1), et seq.; Violation of Equal Pay Act 29 U.S.C. §§ 206(d)(1), et seq.

As a result of Defendant's wrongful conduct, Plaintiff was constructively discharged from employment. Defendant's wrongful conduct has caused Plaintiff significant harm and damage. Delays in resolving this matter could exacerbate and compound the harm and damages to Plaintiff.

Plaintiff's employment was constructively terminated on or about August 6, 2016. Plaintiff notified Defendant in August 2016 of her intent to pursue this matter. After properly exhausting her administrative remedies, Plaintiff filed this action on or about January 20, 2017.

**B. Defendant's Defenses**

Defendant denies any allegations of wrongdoings or unlawful conduct in Plaintiff's Complaint. Defendant denies that Plaintiff was subjected to discrimination, harassment, or retaliation of any sort during her employment with Defendant, or that Defendant otherwise failed to take reasonable and appropriate steps to prevent and/or stop discrimination or harassment. In addition, Defendant denies that its pay and promotional practices violated either the California or Federal Equal Pay Act. Defendant's affirmative defenses are set forth in its Answer to Plaintiff's Complaint.

## II. DISCOVERY PLAN

**A. Initial Disclosures.** Based on Defendant's request to extend the time period under Rule 26(a) for initial disclosures, the Parties have agreed that initial disclosures under Rule 26(a) will be due on April 25, 2017. With the exception of the timing of disclosures, the Parties agree that there shall be no other changes made in the form or requirement for disclosures under Rule 26(a).

**B. Subjects on Discovery, Completion of Discovery, and Phasing or Limitations to Discovery.**

**1. Plaintiff's Position**

The Plaintiff anticipates conducting written discovery and depositions on the following topics: Plaintiff's Affirmative Claims and Damages, as identified in Section I. A, above, and Plaintiff's Complaint, and Defendant's defenses, as identified in Section I. B, and Defendant's Answer.

Plaintiff anticipates completion of discovery by October 6, 2017. Plaintiff notified Defendant of her claims in August 2016 and filed this matter in January 2017. Accordingly, Plaintiff believes that a discovery cutoff of October 6, 2017 provides the parties the reasonably necessary time to conduct discovery and exchange information. This provides 14 months from Plaintiff's written notice of claims to complete discovery.

Plaintiff's position regarding depositions: Plaintiff was employed by Defendant as Vice President/Senior Assistant General Counsel. As such, Plaintiff regularly and routinely communicated, counseled and conferred directly with Defendant's management team, including the CEO, CFO, general counsel, Human Resources, and others. Plaintiff further communicated directly with Defendant's management team regarding her job duties, job performance, job issues and concerns and issues directly relevant to this litigation. Accordingly, based on the information currently available, Plaintiff intends to depose the following individuals: Jeff Barlow, Bob Gordon, John Molina, Jim Novello, Mario Molina, Ron Kurtz, Charlotte Parker and a Rule 30(b)(6) corporate representative. This number of anticipated depositions is being pursued in the utmost good faith by Plaintiff, will cover relevant topics with appropriate corporate witnesses, and is well within the presumptive limit of the FRCP. Plaintiff also intends to depose any percipient witnesses who Defendant identifies. Plaintiff reserves the right to supplement, amend, or alter this plan based on information obtained in the course of discovery and litigation in this matter.

While this matter was pending in California Superior Court, Plaintiff properly and timely served deposition notices and requests for documents on Defendant pursuant to the California Code of Civil Procedure to efficiently and expeditiously move the matter forward. Defendant made no efforts to pursue any discovery or depositions. Defendant never communicated with Plaintiff about the discovery and deposition notices served by Plaintiff until sending an e-mail after removal of this action indicating that the discovery was now moot.

The Parties currently disagree as to the number, length and timing of depositions, including whether Plaintiff's deposition should take place first. Plaintiff intends to meet and confer in good faith regarding these disagreements, and only to seek court intervention if necessary. Defendant has indicated a desire to seek a mental health examination of Plaintiff, which Plaintiff may oppose.

Plaintiff reserves all rights and privileges to object to the taking of depositions of any of the individuals identified by the other party. She also reserves the right to supplement, amend, or alter this plan based on information obtained in the course of discovery and litigation in this matter.

**2. Defendant's Position**

The Defendant anticipates conducting discovery on the following topics: Plaintiff's separation of employment with Defendant, Plaintiff's employment performance, alleged retaliation, harassment, and discrimination purportedly suffered by Plaintiff during her employment with Defendant, Plaintiff's promotions, wages, and other terms and conditions of employment, Plaintiff's subsequent employments and Plaintiff's efforts to mitigate any damages she claims resulted from her employment or separation of employment with Defendant, Plaintiff's employment qualifications, Plaintiff's emotional and/or physical distress claimed as a result of her employment or the separation of her employment with Defendant, Defendant's payment of wages and offer of promotional opportunities to male and female internal counsel. Defendant anticipates completion of discovery by November 30, 2017.

At present, Defendant anticipates taking Plaintiff's deposition, and the deposition of any percipient witnesses who Plaintiff asserts was a witness to the purportedly unlawful conduct alleged in her Complaint. Defendant also believes that Plaintiff's deposition should take place first given that Plaintiff is the individual presenting allegations of unlawful conduct against Defendant, and thus is the person with the most first-hand knowledge of such allegations and who she contends are witnesses to the allegations. While Defendant has not yet noticed any depositions, it has refrained from doing so in light of its removal, the stay on discovery pending the Parties' Rule 26(f) conference, and Defendant's desire to meet and confer with Plaintiff concerning depositions before unilaterally noticing a deposition as Plaintiff did before Defendant's Answer was even due for filing.

In addition, Plaintiff has indicated an intent to depose virtually Defendant's entire management team including the CEO, CFO, General Counsel and others, and indeed served such notices of depositions before Defendant's Answer was even due to be filed or had been filed. Defendant will be disputing Plaintiff's right to do so. That

Plaintiff may or may not have communicated with, counseled, and conferred with Defendant's management team, including the CEO, CFO, General Counsel, Human Resources, and others and purportedly communicated her concerns to them are of no moment at present to whether Plaintiff should be entitled, as a matter of right, to depose all of the individuals that she has identified above. Rather, while Plaintiff may have a right to depose the purported individuals who engaged in the allegedly unlawful harassment and retaliation against her, and perhaps her direct supervisor, Plaintiff should be required to provide sworn testimony first concerning her reasons for believing that other high level executives have any potentially relevant information concerning her claims before obtaining the depositions of such witnesses.

As noted above, it is Defendant's position that discovery will be completed by November 30, 2017, and thus the discovery cut-off in this case should be set for November 30, 2017. The Parties have already indicated that they anticipate depositions of percipient witnesses, Defendant, and Plaintiff and exchange of written discovery. As set forth in Section II.B.1. above, Plaintiff has expressed an intent to depose numerous high-level executives, including the Chief Executive Officer, of Defendant. The Parties already disagree as to whether Plaintiff should be entitled to take such depositions, the timing of such depositions, and the length of such depositions. By the time such disagreements are resolved and the depositions take place in the case, it will likely be summer, and percipient witness schedules – including pre-planned personal and business travel – may make it difficult to schedule such depositions to be completed during the summer. Moreover, the fact that the alleged individual who Plaintiff claims to have harassed her (Jim Novello) is no longer currently employed means that additional subpoena and motion practice may be necessary to secure that witness's attendance at deposition. Plaintiff has also not provided a date that she may be available for her deposition. Further, because it is anticipated that Plaintiff will allege emotional distress claims beyond garden variety claims, Defendant intends to seek a mental health examination of Plaintiff. Plaintiff has already indicated she may oppose. Accordingly, Defendant believes that a discovery cut-off of November 30, 2017 is appropriate and reasonable to permit the Parties time to meet and confer over discovery disputes, schedule depositions, seek Court intervention only if necessary, and complete written discovery.

Defendant reserves all rights and privileges to object to the taking of depositions of any of the individuals identified by the other party. It also reserves the right to supplement, amend, or alter this plan based on information obtained in the course of discovery and litigation in this matter.

C. ESI. There is no known issue with respect to electronic discovery at this time.

D. Privilege Issues. In light of Plaintiff's former role as a Senior Assistant General Counsel for Defendant, and the fact that many of the individuals named by Plaintiff in her Complaint as witnesses were or are attorneys for Defendant, Defendant anticipates that discovery could lead to issues concerning production of attorney client privileged information or work product materials. While the Parties will meet and confer concerning the production of such documents, the Parties have agreed to submit a Joint Stipulated Protective Order with the Court for the Court's approval.

E. Limitations on Discovery. The parties currently disagree as to the number, length, and timing of depositions, but otherwise agree that no changes should be made with respect to the applicability of Federal Rules of Civil Procedure's discovery procedures. The Parties will meet and confer in good faith regarding these disagreements, and only seek court intervention if necessary.

F. Other Orders. The Parties are not aware of any other orders that need to be made at this time.

## III. MANUAL FOR COMPLEX LITIGATION

The Parties agree that the Manual for Complex Litigation should not be used for this case.

## IV. MOTIONS

### A. Plaintiff's Position

Based on Defendant's failure and refusal to provide files, records, and documents formally and properly demanded by Plaintiff pre-litigation pursuant to the California Labor Code, and Defendant's expressed position on limitations of discovery and depositions, Plaintiff anticipates one or more discovery motions if the issues cannot be resolved informally through good faith efforts to meet and confer. Plaintiff proposes that all dispositive motions shall be filed by November 17, 2017.

**B. Defendant's Position**

Defendant anticipates filing a Motion for Summary Judgment and/or Summary Adjudication. Defendant may file one or more discovery motions should its attempt to meet and confer in good faith with Plaintiff prove unsuccessful. Defendant proposes that all dispositive motions shall be filed by January 31, 2018.

Defendant also denies that it has in any way failed to provide files, records, and documents to which it is obligated to under California law. Indeed, Defendant has already produced any document that Plaintiff is otherwise entitled to demand under the Labor Code.

## V. EXPERT DISCOVERY

The Parties agree to follow the timelines set forth in Federal Rule 26(a)(2)(D).

## VI. SETTLEMENT/ADR

The Parties have agreed to a settlement conference with a United States Magistrate Judge.

## VII. TRIAL ESTIMATE

The Parties agree that trial should take approximately 15 court days.

Plaintiff believes that trial in this matter should take place in April of 2018. Plaintiff believes that this provides the parties sufficient time to conduct discovery, resolve disputes, and litigate this matter efficiently. An April 2018 trial date provides 20 months from notice of claims by Plaintiff to Defendant, and 15 months from filing of suit by Plaintiff. Plaintiff notified Defendant in August 2016 of her claims and her intent to pursue this matter, and filed this action in January 2017. Plaintiff was constructively discharged in August 2016. Defendant's wrongful conduct has caused significant ongoing harm and damage to Plaintiff, and any delays in trial resolving this matter could exacerbate and compound the harm to Plaintiff. Defendant's requested trial date of August 2018 is 2 years from Plaintiff's discharge and 19 months from filing of suit.

Defendant believes that trial on this matter should take place in August of 2018. This would provide the parties with sufficient time to conduct discovery, attempt to resolve potential disputes, and submit their dispositive motions before the Court. As mentioned above, Plaintiff has already sought the depositions of at least 6 high level executes, among others, who have difficult and complicated schedules. The Parties are also already in disagreement as to the taking of such depositions, and are even in dispute over whether Plaintiff's deposition should occur first. As such, Defendant's proposed schedule, including the trial date, is an attempt to provide the Court with a realistic trial date request so as to obviate the need to request a further continuance later.

## VIII. TRIAL COUNSEL

Both Parties will be represented at trial by the attorneys listed in the caption above.

## IX. ADDITIONAL PARTIES

The Parties do not currently anticipate adding any other parties.

## X. SCHEDULE OF PRETRIAL AND TRIAL DATES

Pursuant to the Court's Order Setting Scheduling Conference, the Parties have attached hereto as Exhibit A the Schedule of Pretrial and Trial Dates reflecting the Parties' respective proposed dates.

LAW OFFICES OF DONALD R. McKILLOP, SR.

Dated: April 18, 2017

/s/ Donald R. McKillop, SR.
Donald R. McKillop, Sr.
Attorneys for Plaintiff
Erin Hiley

Dated: April 18, 2017

SIDLEY AUSTIN LLP

By: /s/Francis S. Lam
Wendy M. Lazerson, SBN 97285
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Attorneys for Defendant Molina Healthcare, Inc.

**ATTESTATION**

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby attest that all signatories listed above, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Executed this 18th day of April, 2017 in Los Angeles, California.

*/s/ Francis S. Lam*
Francis S. Lam

# EXHIBIT A: SCHEDULE OF PRETRIAL AND TRIAL DATES

Case Name: Erin Hiley v. Molina Healthcare, Inc., et al.

Case No: 2:17-cv-01465-VAP-PLA

| Matter | Plaintiff's Request | Defendant's Request | Court's Order |
|---|---|---|---|
| Trial Date:<br>Jury: X Court:<br>Length: 15 Days | April 17, 2018 | August 7, 2018 | |
| Pretrial Conf., L.R. 16; Hearing on Motions in Limine | April 10, 2018 | July 31, 2018 | |
| Last day to conduct settlement conference | January 12, 2018 | March 30, 2018 | |
| Last day for hearing on non-discovery motions/dispositive motions | November 17, 2017 | February 28, 2018 | |
| Discovery Cut-Off | October 6, 2017 | November 30, 2017 | |
| Expert Disclosure (initial) | January 28, 2018 | May 10, 2018 | |
| Expert Disclosure (rebuttal) | February 16, 2018 | June 22, 2018 | |
| Last day to amend pleadings or add parties | August 31, 2017 | May 30, 2017 | |

Local Rule 16-15 Settlement Choice:

X U.S. Magistrate Judge (#1)

__ Attorney Settlement Officer Panel (#2)

__ Outside ADR (#3)